PROPERTY THAT VESTS IN THE CROWN IN RIGHT OF ALBERTA

A Discussion Paper

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Discussion Paper

TABLE OF CONTENTS

I. INTRODUCTION 1

II. CORPORATE DISSOLUTION AND REVIVAL 3

III. CREDITORS' RIGHTS AND LIMITATION PERIODS 4

IV. UNCLAIMED PROPERTY FUND 4

A. GENERAL 4
B. PROCESSES FOR TAKING CONTROL AND OWNERSHIP OF PROPERTY 5
1. Personal Property 5
(a) Holder Obligations 6
(b) Holding Periods 6
(c) Return of Property to Owners 7
(d) Time Limit to Reclaim 7
2. Real Property (Land) 7
(a) Dissolved corporation as registered owner of land (estate in land) 8
i. Within the first five years after dissolution 8
ii. Five Years after Dissolution 9
iii. Sixty Days after Notice 10
(b) Dissolved corporation holds an interest in someone else's land 10
(c) Contaminated Land 11
C. TRANSITION 11
D. FUND ADMINISTRATION 11
1. The Administrator 11
2. Funding 12
3. Administrator's Rights and Obligations 12
4. Disputes or Appeals 12
5. Jurisdiction 12
6. Privacy Issues 13

Appendix A Uniform Law Conference of Canada's *Unclaimed Intangible Property Act*

Appendix B Timeline

I. INTRODUCTION

This paper proposes a resolution to two distinct, yet related, issues.

First, by virtue of section 229 of the (Alberta) *Business Corporations Act* ("BCA"), any property still owned by a corporation at the date of its dissolution vests in the Crown. Alberta has in place legislation that permits the government to administer specific types of property that come under its control, by voluntary or other means. For example, the government can take possession of mistreated livestock and dispose of these animals under certain conditions. However, in most cases provincial legislation provides little guidance for resolving issues relating to the rights and obligations of the Crown with respect to property of which it becomes the owner by operation of law. Similarly, Alberta has no structures or procedures by which it can identify and assume control of such property. In the absence of legislative certainty and clear government policy, vested property that comes to the Crown's attention is typically dealt with on an ad hoc basis. As a result, government officials have encountered a variety of complex situations, many relating to real property (land), which have been difficult to administer and resolve. In some cases, the problems linger for years.

The second issue relates to unclaimed property of individuals. Four provinces have enacted legislation to provide a means of reuniting people with their unclaimed or abandoned property, and to provide governments with the ability to administer that property until such time as it may be reclaimed. The Uniform Law Conference of Canada has recommended that all provinces adopt a uniform unclaimed property regime, based on its Uniform *Unclaimed Intangible Property Act*.

Most U.S. states have also adopted some form of unclaimed property legislation, based largely on the U.S. National Conference of Commissioners on Uniform State Laws' 1995 draft *Uniform Unclaimed Property Act*, or its predecessors.

In Alberta, a joint ministry committee was established to develop a resolution to these two issues. Participants from Finance, Energy, Environment, Justice, Government Services, Municipal Affairs, Infrastructure and Transportation, and Sustainable Resource Development were involved in the research and development of this paper, which outlines a process for dealing with both personal and real property in the two situations mentioned above.

This discussion paper provides background information about how corporate property comes to vest in the Crown and a comprehensive proposal for dealing with such property when it comes to the Crown's attention. It proposes changes to the corporate revival processes for corporations incorporated under the BCA. It also proposes the adoption of an Unclaimed Property Fund as a primary repository for unclaimed or abandoned property owned by individuals.

Once the approach has been finalized, comprehensive legislation and policy guidelines will be developed to implement these new policies and procedures. These documents will clearly define the rights of owners and former owners of property, enable this property to be dealt with consistently and bring certainty to the process, thereby facilitating property administration and problem resolution.

105-07528/

Request for Stakeholder Input

The Government of Alberta encourages all interested parties to review this paper and submit their views and comments on the proposed approach. Stakeholders are asked to make submissions to Alberta Finance by October 31, 2005. All submissions should specify a contact person and contact details (return address, telephone, fax and e-mail address). Please note that the submissions become the property of Alberta Finance and are subject to the *Freedom of Information and Protection of Privacy Act*. Comments and opinions provided in the submissions will be shared with the Alberta Government departments participating in the joint ministry committee and may be published or used at the discretion of Alberta Finance. Comments published will not be attributed to the author without the author's consent.

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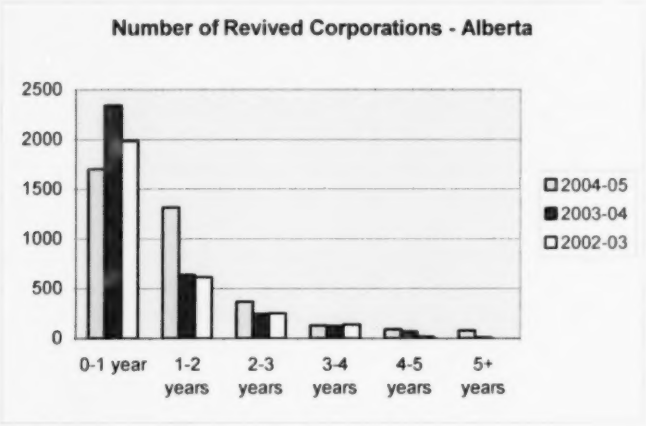
II. CORPORATE DISSOLUTION AND REVIVAL

Part 17 of the BCA provides the circumstances under which a corporate dissolution may be triggered.[1] Dissolution may be voluntary, occurring after an orderly disposition of corporate property. Alternatively, corporations may be dissolved by the Registrar of Corporations for failure to file documents (primarily annual returns), or in response to a Court order. Under the provisions of the BCA, a corporation ceases to exist on the date shown on the Certificate of Dissolution issued by the Registrar.

At any given time, Corporate Registry has about 300,000 active corporations on its database. In the 2004-05 fiscal year, more than 18,000 corporations, or 6 percent, were dissolved for failure to file the required documents, generally about 18 months after the filing due date. In comparison, almost 3,700 corporations were revived in 2004-05. Of those revived, almost half were revived within a year of dissolution, and almost all were revived within five years of dissolution.[2]



While the property of a dissolved corporation vests in the Crown immediately upon dissolution, Alberta does not desire or intend to assume control of a dissolved corporation's property where the dissolved corporation is likely to be revived. At the same time, it is not unreasonable to encourage compliance with legislative or regulatory requirements, particularly when the processes around vested property are clarified. This paper therefore proposes a modified approach to, and time limits on, the revival of a corporation after dissolution.

Currently any interested party may apply, at any time, to the Registrar to have a corporation revived. An interested party is generally someone with monetary or legal rights that were affected by the dissolution of the corporation and includes a director, shareholder or creditor. Articles of revival and all required annual returns must be transmitted to Corporate Registry together with the payment of a prescribed fee. The corporation is revived on the date shown on

[1] Societies are also subject to Part 17 of the BCA.
[2] Source: Alberta Corporate Registry Office

the Certificate of Revival and is deemed to have continued in existence through the intervening period as if it had not been dissolved.

Under this proposal, corporations may be revived within five years from the date of dissolution but not thereafter. The revival fee will be graduated depending upon the length of time since dissolution. Corporate Registry will receive its prescribed fee for revival with the balance forwarded to the administrator of the Unclaimed Property Fund[3] to cover administrative expenses.

III. CREDITORS' RIGHTS AND LIMITATION PERIODS

This paper does not propose to alter the law surrounding creditors' rights or to affect the limitation periods in place today in various statutes, particularly the *Limitations Act*. If a creditor had a right against property prior to the corporate dissolution, the creditor will retain that right after the dissolution. Section 227 of the BCA provides that a legal action commenced before the dissolution may be continued, and a proceeding may be brought against a corporation within a specified period of time after the dissolution. However, creditors must still abide by existing limitation periods to commence an action.

Subject to the specific comments and processes set out in this paper, this proposal is not intended to remove the right of a creditor to pursue the property of a dissolved corporation to satisfy an obligation owed by the corporation to the creditor. As a general principle, the Crown will not have any greater rights in the property than had the dissolved corporation. Nevertheless, the creditor will be required to notify the administrator of any action taken regarding property vested in the Crown as a result of the dissolution of the corporate debtor. The notification will be the same as that required to be served on the corporation under the relevant law governing the enforcement of the debt. The administrator may take any action that the dissolved corporation could have taken, but will generally allow the creditor full opportunity to enforce its security.

The legislation will state that the administrator is not liable for the debts of the dissolved corporation. Nor will the administrator facilitate or arbitrate disputes between creditors over the former property of a dissolved corporation. As is currently the case, creditors will have to look to existing priority legislation or the Courts for resolution among themselves. Creditors will also be able to apply to the Courts within a prescribed time if they do not agree with a decision of the administrator.

IV. UNCLAIMED PROPERTY FUND

A. GENERAL

Property becomes vested in the Crown in different ways. An individual may die without a will and with no known heirs. A corporation may be dissolved, either by failure to meet its reporting requirements, or after it ceases operations, leaving behind undisposed property. In some cases, owners just lose track of their property, as is the case with many unclaimed bank accounts. Any

[3] The administrator and the Unclaimed Property Fund will be discussed in detail later in this paper.

type of property that can be owned by an individual or a corporation can eventually vest in the Crown. This means that the processes developed by the government must be sufficiently broad to enable it to deal with any kind of property.

Most of the property that vests in the Crown tends to be property such as bank accounts and unclaimed dividends, land and buildings, or resource properties. Specific approaches are therefore presented in this paper to address the ownership and control of these types of property. With respect to other property, such as physical personal property, new legislation will give the Crown clear authority to deal with that property as required.

All property (including the property of a dissolved corporation) that, by law, vests in the Crown in right of Alberta will become part of the Unclaimed Property Fund (the Fund). The Fund will also include individuals' property that becomes unclaimed or abandoned pursuant to the new legislation. Property of a deceased individual currently coming into the Crown's possession and ownership through the operation of the *Ultimate Heir Act* will also become part of the Fund and that Act will be repealed.

Where a dissolved corporation held property in trust for other parties, the beneficiaries will be able to appoint a new trustee to assume ownership of the trust property, and that property will generally be exempt from the program. However, similar to other unclaimed or abandoned property, trust property will come into the Fund if beneficiaries cannot be located. Property held by federally chartered banks are subject to the requirement of the *Bank Act* (Canada) and do not fall under this proposal. Nevertheless, the Fund will have the ability to claim from the Bank of Canada monies belonging to the Alberta Crown. Other than as set out herein, the new legislation will not override any existing Alberta legislation that already includes a scheme for the identification and administration of unclaimed property.

When and how the Fund will take custody and control of property is set out below. Details on the structure of the administrator and other administrative matters are set out later in this paper.

B. PROCESSES FOR TAKING CONTROL AND OWNERSHIP OF PROPERTY

There are two categories of property – real and personal. **Real property** refers to land and whatever is erected on, or affixed to, the land, such as buildings. For purposes of the following discussion, the references to "land" will include buildings and be based on the definition of "land" in the *Land Titles Act*. This definition also includes surface lands and subsurface minerals and any estates or interests in the land. **Personal property** is a right or interest in items or goods such as vehicles, machinery, equipment, bank accounts, dividend entitlements and stocks.

1. Personal Property

Personal property can be divided into two subgroups: tangible personal property and intangible personal property.

In general, tangible personal property includes chattels and goods with a physical form and characteristics, other than real property. Examples are automobiles, lawnmowers, mobile homes,

furniture and jewelry. Intangible personal property is property that lacks a physical existence, and is held, issued or owed by an entity. It includes financial items such as bank accounts, cheques, money orders, credit balances, gift certificates, unpaid wages, utility deposits, bonds, annuities, insurance policies, shares and business goodwill. It is anticipated that the vast majority of personal property coming under Fund administration will be intangible personal property.

The proposed approach to dealing with personal property largely follows the recommendations of the Uniform Law Conference of Canada (ULCC). The model *Unclaimed Intangible Property Act*, published by the ULCC, is attached as Appendix A.

(a) Holder Obligations

In general, unclaimed personal property is expected to come to the attention of the administrator by notice from a holder. A holder will be defined in the new legislation, but is essentially any person that holds property for someone else, such as a credit union holding a deposit belonging to a customer or a utility company with unclaimed deposits.

Each year, holders will be required to review all accounts or holdings that appear dormant and compare them to the legislated criteria. The legislated criteria will include holding time limits for property, including personal property of a dissolved corporation. If property is valued at more than $50 and considered unclaimed, holders must take reasonable steps to remind the owner that the property exists, and is about to be transferred to the administrator. If the owner does not respond or cannot be located, then the property will be transferred to the administrator, along with the prescribed contact information (such as owner's name, social insurance number and last known address) 120 days after the end of the year in which it becomes unclaimed.

Holders of unclaimed property will be relieved from liability with respect to unclaimed property upon the transfer of that property to the Fund. Holders will be prohibited from charging a fee for sending a notice or imposing a dormancy fee, unless it is authorized by a written contract between the holder and the owner, and it does not exceed a prescribed amount.

Property transferred to the administrator will normally be converted to cash.

(b) Holding Periods

Holding periods will be defined in the legislation or by regulation, and will depend on the type of property. The default holding period for property owned by individuals will be five years. After five years of inactivity with no owner contact, a dormant account will be deemed to be unclaimed and will have to be turned over to the administrator. However, personal property of a dissolved corporation will be deemed unclaimed one year after the dissolution. Similarly, unclaimed wages and utility deposits will be deemed unclaimed within one year. Holding periods for other personal property are expected to follow the recommendations in the model *Unclaimed Intangible Property Act* (see Appendix A).

(c) Return of Property to Owners

An individual may submit a claim for the return of his or her property. A revived corporation may also submit a claim for return of its property, but a shareholder of a dissolved corporation will not be able to submit such a claim. The administrator will allow or deny the claim within 90 days. If the claim is allowed, the property will be returned to the owner after the payment of an administration fee.

Property still in original form will be returned in original form. If the administrator has incurred expenses relating to that property, then those expenses, together with the appropriate administrative charge, must be paid before the property is returned. If property has been liquidated and converted into cash, the net value realized for the property, less the administrator's fees and expenses, will be returned. The fees will be a prescribed amount, but will not be more than the value of the property.

The administrator will not be liable for any decline in the value of property. Income earned from property in the custody of the administrator is the sole property of the Fund and will not be repaid.

(d) Time Limit to Reclaim

The time limit for owners (including beneficiaries and revived corporations) to reclaim personal property from the Fund will be ten years after the property is transferred to the Fund This extends the time limit under the provisions that will replace the *Ultimate Heir Act* and is consistent with the current 10-year ultimate limitation period in the *Limitations Act*. After the 10-year period has passed, an owner's right to recover property is extinguished. While the 10-year limitation will apply to all owners who wish to reclaim property, it should be noted that the time limit on corporate revival means that if a corporation has not been revived within the 5-year limitation period, it will not be able to reclaim its former property.

2. Real Property (Land)

When a corporation is dissolved it ceases to exist. Its land vests in the Crown notwithstanding that the certificate of title at the Land Titles Office ("LTO") remains in the name of the dissolved corporation. It is anticipated that the majority of cases in which land vests in the Crown will occur as a result of corporate dissolutions. However, there may be situations where land formerly owned by an individual vests in the Crown. While those other cases are expected to be uncommon, those lands will also be dealt with in the manner described below.

There are two categories of tenure in land - estates in land and interests in land. Because of the different nature of these categories, separate processes are proposed to deal with them. The registered owner holds an estate in land as evidenced by a certificate of title issued by the Registrar of Land Titles. The certificate could be in respect to surface land or mines and minerals. These are dealt with in section (a) below. In many cases, however, other parties have an interest in the land e.g. a mortgage, lease, lien, easements or other encumbrance, which are

typically registered against the title to the land. The approach to these interests is explained in section (b) below.

(a) Dissolved corporation as registered owner of land (estate in land)

i. Within the first five years after dissolution

At the present time, there is no easy way for the administrator to determine which parcels of land have vested in the Crown as a result of a corporate dissolution. Municipalities and others who are, or become aware, that a dissolved corporation owns land will be asked to notify the administrator to that effect. Municipalities will also be required to provide the administrator with a list of all corporate owned land that is entering the tax recovery process. The administrator will compare the list of landowners to a list of dissolved corporations provided by Corporate Registry. If this comparison indicates that the landowner corporation is dissolved, the administrator will request a title search at the LTO.[4]

Where a title search confirms that the dissolved corporation is the registered owner of land, the administrator will file a caveat with the Registrar of Land Titles to provide notification that the administrator now has an interest as vested owner of that particular parcel of land. The caveat will not affect the registration of a transaction that occurred prior to the corporation's dissolution or prohibit subsequent registrations, but it will serve as notice that the Crown's rights and interest in the property should be considered in any subsequent transaction involving the land. A caveat may be filed at any time after the dissolution.

Mineral titles for which a Certificate of Title has been issued by the Registrar will be treated in the same manner.

The administrator will forward a copy of the caveat to the relevant municipal authorities and to those parties with registered encumbrances on title. This will provide interested parties with notice that the registered owner of the parcel of land no longer exists and the land has vested in the Crown. It is expected that the caveat will spur encumbrancees and municipalities to realize on their security or take any other action they are entitled by enactment or contract to take.

Without a caveat, a person who makes a non-fraudulent purchase of land from a dissolved corporation will continue to take title, free of the Crown's interest, and the Certificate of Title issued by the LTO will continue to be proof of ownership. Similarly, prior encumbrances or interests registered against the title are not affected by registration of this caveat.

Notwithstanding these principles, it is the buyer's responsibility to ensure that the corporation is not dissolved at the time of purchase. This information can be easily obtained through a search of the Corporate Register. If the buyer does not perform such due diligence, the buyer risks a personal action by the administrator or another affected party. As stated above, a personal action will not affect the title to the land. Any disputes between a buyer or encumbrancee and the

[4] It is anticipated that automated searches will become available when the land titles system is redesigned over the next several years. When that occurs, automatic searches conducted upon the dissolution of a corporation will reveal land owned by that corporation, and in most cases, the administrator will register a caveat on the title to that land.

administrator relating to unregistered ownership or interests in land arising after the land has vested in the Crown will be determined through the normal Court process between the parties. The administrator must be served with notice of any proceeding and may appear or be represented throughout the Court process.

A statutory provision will relieve the administrator from liability to pay monies outstanding in respect of any encumbrance on land that has vested in the Crown. This is necessary to ensure that the administrator is not obligated to make payments on any personal covenants, in respect to mortgages or other encumbrances, by operation of the *Law of Property Act* or the *Land Titles Act*. This will not affect the encumbrancee's right to take action in respect to the land.

If the corporation is subsequently revived, it will be able to apply to the administrator to have the caveat discharged from title. After payment of the appropriate administration fee, the administrator would file a discharge of caveat with the Registrar.

ii. Five Years after Dissolution

At any time following dissolution, but generally not prior to the expiry of the five-year time period to revive a dissolved corporation, the administrator will be able to issue, based on a new statutory authority, a directive to the Registrar of the LTO. The directive will require the Registrar to cancel the existing certificate of title and issue a new certificate of title in the administrator's name. This directive may involve one or more parcels of land. It will specify which registered instruments and encumbrances are to be dropped and which carried forward when the new title is issued.

The administrator will provide advance notice of intent to issue a directive to the registered owner and all subsisting encumbrances, at their last known addresses. The notice would specifically identify those registered instruments and encumbrances affected when a new title is issued. It will contain clear wording that if an action is not commenced, and a certificate of *lis pendens*[5] filed in the LTO within the 60-day period from when the notice was sent, the Registrar will remove the registered instrument or encumbrance from title.

While it is expected that the encumbrancees will already have taken enforcement steps, service of a notice of a proposed directive will provide an additional reminder for those encumbrancees to take steps to realize on their security, or, in the case of municipalities, to commence a tax sale of the property under the *Municipal Government Act*. In this 60-day period, encumbrancees will have the full range of remedies currently available to them to protect their interests in the parcel of land.

When issuing the new certificate of title, the Registrar will be permitted to rely on the directive and would not be obliged to verify that the 60-day notice has been provided.

Any Court action filed in relation to the encumbrance would proceed in the normal course through the Courts.

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[5] A certificate of *lis pendens* is essentially a notice on title that there is a dispute relating to the property.

iii. Sixty Days after Notice

Following the expiration of 60 days, the Registrar will cancel the existing certificate of title to the parcel of land and issue a new title in the name of the administrator. While the new Certificate of Title would be subject to all encumbrances in respect of which a certificate of *lis pendens* has been filed at the Land Titles Office, it would also carry forward easements and other rights referred to in subsection 61(1) of the *Land Titles Act*. The administrator could then deal with the land subject to the encumbrances that are registered or implied against that new title.

If the revival period for a dissolved corporation has passed, and ownership of land formerly owned by the dissolved corporation has vested in the Crown, it will no longer be necessary for municipalities to wait a full 15 years for the proceeds of a tax sale with respect to that land. Consequential amendments to the *Municipal Government Act* will be made to allow for the early payment of tax recovery proceeds in these circumstances. Any surplus will be paid to the administrator.

The above approach will generally prevent the administrator from expending resources to deal with the land of an operating corporation likely to be revived in the five-year period. At the same time, it provides a means to protect the Crown's interests when a corporation has ceased operations. During the period when the administrator takes a passive approach (i.e., before the issuance of a new title), section 5 of the *Proceedings Against the Crown Act* will apply. This section essentially insulates the Crown from liability for property which vests in the Crown upon dissolution of a corporation before the Crown takes possession or control of the property.

(b) Dissolved corporation holds an interest in someone else's land

Generally, the administrator will assume no responsibility for financial obligations of the dissolved corporation in respect of interests registered against title to someone else's land. Therefore, the administrator will not take steps to identify these instances.

While the registered owner will be precluded from making any claim against the administrator in respect of these interests, the registered owner will be able to pursue the dissolved corporation for whatever remedies that owner has. This may include a pre-existing right of a landlord to seize effects of the dissolved corporation or to sue it for damages.

Where this type of interest has been identified, the administrator may choose to assume the interest of the dissolved corporation in the lands. It is expected that the administrator will assume many non-financial encumbrances (such as easements and statutory rights of way, along with related physical infrastructure). In those cases, the administrator will issue a directive to the Registrar of Land Titles, with a copy to the registered owner, to change the name and address of the interest holder to the name and address of the administrator. The administrator will assume the rights and obligations under that interest from either the date the encumbrance is assumed or the date of corporate dissolution, and will be expected to deal with the interest in the usual manner from that time forward.

If the administrator does not assume the interest, registered owners of land will be able to apply to the administrator to have encumbrances removed from their title where that interest is in the name of a dissolved corporation whose revival period has passed. If a dissolved corporation can no longer be revived, any registered interests it holds in someone else's land may be removed from title.

(c) Contaminated Land

It is anticipated that some environmentally contaminated land will become part of the Fund by virtue of Alberta's vesting legislation. The *Environmental Protection and Enhancement Act* will continue to apply to the chain of owners. Those responsible for contamination will continue to be liable for clean-up. Changes will be made to legislation to ensure that the Fund will not be liable for, or obligated to undertake remediation for, prior contamination. Nevertheless, the Crown may undertake remediation if circumstances require immediate action. Remediation costs must be repaid before an owner may reclaim the land.

C. TRANSITION

One of the main drivers behind the development of these proposals was the government's inability to resolve ongoing issues with vested property. It would therefore be counter-productive to exclude corporations that dissolved prior to the introduction of the process. At the same time, the rules with respect to corporate revival are changing and transitional provisions are appropriate.

Thus, on implementation of these proposals, corporations dissolved prior to the effective date of the legislation will be eligible for revival for five years from the date the legislation comes into force. Corporations that are dissolved after the effective date of the legislation will be eligible for revival for five years from the date the Certificate of Dissolution is issued.

D. FUND ADMINISTRATION

1. The Administrator

The term "administrator" has been used throughout the document to refer to the entity in charge of administering the program. Given that the Crown becomes the owner of the property described in this paper (either by operation of law upon the dissolution of the corporation or expiry of the 10-year claim period), and that the funding will be subject to the government's budget process, it is proposed that the "administrator" be the Department of Finance.

The administrator will be responsible for implementing the processes described in this document. It will have legislated authority to carry out the functions of the administrator and will be in charge of all aspects of the Fund, from collections of property to disposal. It will also be responsible for establishing the process and data banks to be used by owners to identify unclaimed property under the administrator's control.

2. Funding

The administrator will be managing property that belongs to the Crown, and property being administered on behalf of owners of unclaimed property. While it is expected that on an ongoing basis, the revenue from the Fund and administration fees will be sufficient to fund the activities of the administrator, its annual budget will be subject to the Minister's oversight and the government's budget process.

It is anticipated that the property falling into this program will be set aside as a segregated Fund (in this paper called the "Unclaimed Property Fund" or "Fund"). The Fund will comprise all property over which the administrator exerts control, and will be subject to the fees and costs of the administrator. The administrator's fees for the various activities it undertakes will be set by regulation.

3. Administrator's Rights and Obligations

As indicated earlier in this paper, all property of dissolved corporations vesting in the Crown and other unclaimed property will become part of the Unclaimed Property Fund. To deal with this property properly and ensure its maximum value, the administrator must have all the rights that an owner of the property would have. Therefore, the administrator will be able to sell or invest the property as it sees fit and will not be liable for decisions made in good faith. However, because a rightful owner has the ability to reclaim his or her property, the administrator will be required to maintain detailed records, including information on, and support for, any charges that will be recoverable against the value of the property on its return to its rightful owner.

The administrator will have the ability to demand additional owner identity and address information from a holder. The administrator will also have the right to demand and review a holder's books and records and enter a holder's premises to do so.

4. Disputes or Appeals

The administrator will not arbitrate or adjudicate creditor or claimant disputes over property that vests in the Crown. The parties must look to the Courts for resolution of these issues. The administrator is entitled to recover any expense incurred in relation to the property prior to its distribution to a creditor.

The administrator or an interested party will be able to make an application to the Court of Queen's Bench for a determination of disputes relating to denied claims, disputes between competing claimants, or disputes with holders.

5. Jurisdiction

Property presumed abandoned as defined in the new legislation will become subject to the unclaimed property rules, if the last address of the owner is in Alberta. If the address is undeterminable, Alberta will have jurisdiction if the property, or, failing that, the holder, is located in Alberta.

Extraprovincial corporations that become dissolved in their home jurisdiction will be subject to these rules for any land located in Alberta. Personal property of an extraprovincial corporation will be subject to the rules if the registered office of the corporation is in Alberta, or in the absence of a registered office, if the property is located in Alberta or, failing that, if the holder is located in Alberta. Alberta law does not govern the dissolution and revival of extraprovincial corporations. However, the administrator will hold the funds of a corporation dissolved in its home jurisdiction for ten years. The property or proceeds will be returned to the corporation (less applicable fees and costs), if the extraprovincial corporation revives within that 10-year period.

Land located in a First Nations' reserve will be exempt from this program. Unclaimed property subject to the *Bank Act* will be paid to the Bank of Canada as required by that legislation. However, the Fund will be able to claim property belonging to the Crown from the Bank of Canada. Other unclaimed or abandoned property subject to a specific legislated process will be exempt from this new legislation.

6. Privacy Issues

Holders of property may be subject to the Alberta *Personal Information Protection Act*, the *Freedom of Information and Protection of Privacy Act*, or the federal *Personal Information Protection and Electronic Documents Act*. Provisions will be added to the new legislation to address privacy issues. In particular, holders will be given specific authority to provide personal information to the administrator. The administrator will be given specific authority to collect, use and disclose personal information for the purpose of administering the program, reuniting owners with property and verifying claims. The administrator will also be given the authority to publish select personal information to enable public search access to the unclaimed property database (similar to the searchable database published by the Bank of Canada). The administrator will also be able to disclose personal information to the police, the Courts, or other entities specified in the legislation.

Appendix A

Uniform Law Conference of Canada

UNIFORM LAW CONFERENCE OF CANADA
THE UNCLAIMED INTANGIBLE PROPERTY ACT

Note:

The Unclaimed Intangible Property Act was prepared by the Uniform Law Conference of Canada and is reproduced with permission as an Appendix to this Discussion Paper.

The policy recommendations made in this legislation are substantially, but not entirely, adopted in the Discussion Paper. This legislation will be used as a guideline in the development of Alberta's legislation, with the modifications necessary to carry out Alberta's policy intent.

Contents
Section

PART 1 – INTERPRETATION AND APPLICATION
1 Definition
2 When property is unclaimed
3 Application

PART 2 – RIGHTS AND DUTIES OF HOLDERS AND ADMINISTRATORS
4 Notice to apparent owner
5 Fees
6 Holder must report and pay or deliver unclaimed property
7 Additional requirement to provide unclaimed property
8 Voluntary payment or delivery of property
9 Delivery of records
10 Administrator may demand additional information
11 Retention of records
12 Payment or delivery relieves holder from liability
13 Administrator has rights of owner
14 Administrators' rights and obligations relative to foreign administrators
15 Unclaimed property account
16 Public notice by administrator
17 Filing of claims, responses and return of property
18 Agreements with other jurisdictions

PART 3 – INSPECTIONS
19 Definition
20 Inspection
21 Warrants
22 Copies of records

PART 4 – ENFORCEMENT
23 Confidentiality
24 Determination and review
25 Appeal from determination of the administrator
26 Court may enforce obligations
27 Offences
28 Interest

PART 5 – GENERAL
29 Agreements to locate property
30 No contracting out
31 Rights unaffected by limitation periods
32 Power to make regulations
33 Transition
34 Commencement

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of [Enacting Jurisdiction], enacts as follows:

PART 1 – INTERPRETATION AND APPLICATION

Definitions

1 (1) In this Act:

"administrator" means [*the Public Guardian and Trustee or equivalent office*];

"apparent owner" means, in relation to property, the person whose name appears on the records of a holder as the person entitled to property held, issued or owing by the holder;

"based", except in sections 2 (1) (h) and 29 (3), means based within the meaning of subsection (2);

"business organization" means a corporation, partnership, organization or other entity, whether operated for profit or not and, without limitation, includes a mutual fund, an insurer, a sole proprietorship and a fraternal or mutual benefit association;

"carry on business" means carry on business within the meaning of subsection (3);

["deliver", with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person's mail box or receptacle at the person's residence or place of business;] [*Interpretation Act definition*]

"governmental organization" means

> **(a) a [*ministry*] of the government or a government agency, board or commission,**
>
> **(b) a local government within the meaning of the [*Provincial or Territorial statute governing local governments*] or**
>
> **(c) a government corporation within the meaning of the [*Provincial or Territorial statute governing Crown corporations*];**

"holder" means, in relation to property that is subject to this Act, the entity, including a business organization and a governmental organization, that is or becomes obligated to hold the property for the account of, or to deliver, pay or transfer the property to, the apparent owner;

"inspector" means a person carrying out an inspection under the authority of section 20 (1);

"owner" means a person who has a legal or equitable interest in property that is subject to this Act or the person's legal representative;

["person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;| [*Interpretation Act definition*]

"property" means an interest in intangible property that is held, issued or owed by a business organization, or by a government or governmental organization, including all income or increments from it, and includes, without limitation, property that is referred to as or is evidenced by

(a) money or a cheque, money order, traveller's cheque, draft, deposit, interest or dividend,

(b) a credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage or salary, unused ticket or unidentified remittance,

(c) a share or other evidence of ownership of an interest in a business association,

(d) a bond, debenture, note or other evidence of indebtedness,

(e) money deposited to redeem shares, bonds, coupons or other securities or to make distributions,

(f) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance or health and disability insurance, and

(g) an amount distributable from a trust or custodial fund established under a plan to provide education, health, welfare, pension, vacation, severance, retirement, death, share purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits,

but does not include any thing or class of thing excluded by the regulations;

"reciprocating jurisdiction" means a jurisdiction that is prescribed by the Lieutenant Governor in Council under subsection (5) to be a reciprocating jurisdiction;

"reporting holder" means a person who, under section 6 (1), is obligated to comply with section 6 (2);

"unclaimed property" means property that is presumed to be abandoned within the meaning of section 2.

(2) For the purposes of this Act, a person that is not an individual is based in a jurisdiction if the person's central management is exercised in that jurisdiction.

(3) For the purposes of this Act, a person that is not an individual carries on business in a jurisdiction if

(a) it has or is required by law to have, in that jurisdiction,
(i) a registered office, or
(ii) in the case of a partnership, a registered office or business address,

(b) according to law, it
(i) has registered an address in that jurisdiction at which process may be served generally, or
(ii) has nominated an agent in that jurisdiction on whom process may be served generally,

(c) it has a place of business in that jurisdiction, or

(d) its central management is exercised in that jurisdiction.

(4) If the Lieutenant Governor in Council is satisfied that a jurisdiction has enacted unclaimed property legislation that is substantially similar to this Act in form and content, the Lieutenant Governor in Council may prescribe that jurisdiction to be a reciprocating jurisdiction for the purposes of this Act.

Comment: "Apparent owner" is defined as the person whose name appears on the holder's records as the person entitled to the property held by the holder. A jurisdiction's right to require a holder to transfer unclaimed intangible property depends upon the information concerning the last known address of the apparent owner that is in the holder's records. The holder is not required to undertake an inquiry as to the name or address of the actual owner, or to resolve disputes amongst persons contesting ownership. However, the actual owner may claim the property from the administrator. Also, the administrator of a reciprocating jurisdiction where the last known address of the actual owner is located, may claim and receive the property from the jurisdiction which initially received it.

The definition of "property" is inclusive. The descriptions of property interests set out in the definition are not limiting, but are stated to help holders identify kinds of property which might otherwise be overlooked. The definition expresses the principle that property is the underlying right or interest evidenced by a given instrument.

Certain types of property may also be excluded by regulation. Individual jurisdictions may wish to exclude from the act certain kinds of arrangements respecting types of unclaimed property for which there exists another well-established process.

Section 1(2) and (3) define the connections which a holder must have with the enacting jurisdiction in order for a holder to be subject to this Act in the enacting jurisdiction. Unlike the situation in the United States where legal obligations on holders arise from the United States Supreme Court decision in Texas v New Jersey, in Canada jurisdiction over holders must be founded on legislative enactments in a given province or territory. Both the definitions in subsection (2) and (3) parallel similar definitions in the Uniform Court Jurisdiction and Proceedings Transfer Act.

Section 1(4) provides that the Lieutenant Governor in Council of one jurisdiction may prescribe that another jurisdiction is a reciprocating jurisdiction if satisfied that the other jurisdiction has legislation substantially similar in form and content. Reciprocity of legislation between jurisdictions is fundamental to addressing interjurisdictional elements. Reciprocal jurisdictions are expressly referred to in section 6 of the Act, which provides the basis upon which the enacting jurisdiction may properly claim and receive unclaimed property.

When property is abandoned

2 (1) Property is presumed to be abandoned if it is unclaimed by the apparent owner, within the meaning of subsection (3), within the following applicable period:

(a) for a traveler's cheque, 15 years after issuance;

(b) for a money order, 7 years after issuance;

(c) for a share or any other equity interest in a business organization, 5 years after the earliest of

(i) the date of the earliest dividend, share split or other distribution unclaimed by the apparent owner,

(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable, and

(iii) the date on which the holder discontinued mailings, notifications or communications to the apparent owner;

(d) for a debt of a business organization that accrues interest, 5 years after the date of the earliest interest payment unclaimed by the apparent owner;

(e) for a demand deposit, savings deposit, certificate of deposit, guaranteed investment certificate, guaranteed investment confirmation or other deposit made for a fixed period that has matured including a deposit that is automatically renewable, 5 years after the later of

(i) maturity, and

(ii) the date of the last indication by the apparent owner of interest in the property;

and, for the purposes of this paragraph, a deposit that is automatically renewable is deemed matured on its initial date of maturity, unless the apparent owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder;

(f) for money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(g) for a gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is deemed to be 60% of the certificate's face value;

(h) for an amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable on proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(i) for property distributable by a business organization in the course of a dissolution, one year after the property becomes distributable; [*may be dealt with by enacting jurisdiction's corporation statutes*]

(j) for property received by a court as proceeds of a class action, and not distributed under the judgment, one year after the distribution date;

(k) for property held by a court, government or governmental organization, one year after the property becomes distributable;

(l) for wages or other compensation for personal services, one year after the compensation becomes payable; [*may be dealt with by enacting jurisdiction's employment standards statutes*]

(m) for a deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(n) subject to paragraph (o), for property in a registered retirement savings plan or a registered education savings plan under the Income Tax Act (Canada) or other account or plan that is qualified for tax deferral under the income tax laws of the jurisdiction in which the plan or account is registered or held, 3 years after the earliest of

(i) the date of the distribution or attempted distribution of the property,
(ii) the date of the required distribution as stated in the plan or trust agreement governing the plan, and
(iii) the date, if determinable by the holder, specified in the income tax laws of the jurisdiction in which the plan or account is registered or held, by which distribution of the property must begin;

(o) for money paid out of a registered retirement income fund under the *Income Tax Act* (Canada), 5 years after the date of payment although the money within the registered retirement income fund is not, while it remains within that fund, presumed to be abandoned;

(p) all other property, 5 years after the earlier of

(i) the date on which the apparent owner's right to demand the property arises, and
(ii) the date on which the obligation to pay or distribute the property arises.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the apparent owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) For the purposes of subsection (1), property is unclaimed if, within the applicable period referred to in subsection (1), the apparent owner has not

(a) communicated with the holder concerning the property or the account in which the property is held

(i) in writing, or
(ii) by other means reflected in a contemporaneous record prepared by or on behalf of the holder, or

(b) otherwise indicated an interest in the property.

(4) For the purposes of subsection (3) (b), an indication of an apparent owner's interest in property includes,

(a) in the case of a dividend or other distribution made with respect to an account or underlying share or other interest in a business organization, the presentment of a cheque or other instrument of payment of a dividend or other distribution or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received,

(b) in the case of an account in which the property is held, apparent owner-directed activity in the account including a direction by the apparent owner to increase, decrease or change the amount or type of property held in the account,

(c) in the case of a bank account, the making of a deposit to or withdrawal from the account, and

(d) in the case of an insurance policy, the payment of a premium with respect to a property interest in the policy,

but does not include a communication with the apparent owner by a person other than the holder or its representative who has not in writing identified the property to the apparent owner.

(5) Despite subsection (4) (d), the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(6) Property is payable or distributable for the purposes of this Act despite the apparent owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

Comment: Section 2 sets out the periods of time for various types of property to be presumed abandoned. Section 2 parallels Section 2 of the U.S. Uniform Unclaimed Property Act, which is based on commercial experience respecting appropriate periods of time. Property not expressly mentioned is subject to a 5-year dormancy period.

Application

3 This Act does not apply to an individual who is a holder by virtue of any loan or other extension of credit to that individual that is primarily for that individual's personal, family or household purposes.

Comment: The Act does not apply to individuals who receive a loan or extension of credit for their personal, family or household purposes.

PART 2 – RIGHTS AND DUTIES OF HOLDERS AND ADMINISTRATORS

Notice to apparent owner

4 (1) A holder of unclaimed property must provide a written notice that complies with subsection (2) to the apparent owner of that unclaimed property at least 3 months, but not more than 6 months, before complying with section 6 in relation to that unclaimed property.

(2) A notice required under subsection (1) must be delivered to the apparent owner's last known address and must

(a) identify the unclaimed property,

(b) state that the unclaimed property is subject to this Act,

(c) identify the holder and state that the holder is holding the unclaimed property, and

(d) contain any other prescribed information.

(3) Subsection (1) does not apply if the holder has reasonable grounds to believe that

(a) the correct address for the apparent owner cannot reasonably be ascertained, or

(b) the value of the unclaimed property is less than $100.

Comment: Before reporting and delivering unclaimed property as required under the Act, the holder is required to give notice to the apparent owner and provide the apparent owner with the information described in section 4(2). The purpose for this is to afford the holder one last opportunity for reuniting the owner with his or her property. The holder need not provide this notice if the address of the apparent owner cannot reasonably be ascertained or if the value of unclaimed property is less than $100.00.

Fees

5 (1) A holder must not charge a fee for sending a notice to an apparent owner under section 4 (1) unless

(a) the fee is authorized by a written contract between the holder and the apparent owner,

(b) the fee is reasonable and does not exceed any amount prescribed for the purposes of this paragraph, and

(c) the holder regularly imposes the fee, which fee is not regularly reversed or cancelled.

(2) A holder must not impose a charge against an owner or an apparent owner because the owner or apparent owner has failed to communicate with the holder or because there have been no transactions with respect to the property unless

(a) the charge is authorized by a written contract between the holder and the owner or apparent owner, as the case may be,

(b) the charge is reasonable and does not exceed any amount prescribed for the purposes of this paragraph, and

(c) the holder regularly imposes the charge, which charge is not regularly reversed or cancelled.

(3) For the purposes of this section, ceasing to make payment of interest is deemed to be the imposition of a charge and the amount of the unpaid interest is deemed to be the amount of the charge.

Comment: Section 5(1) limits the circumstances in which notice fees may be charged by a holder to an apparent owner. Section 5(2) limits the circumstances for dormancy service charges. Section 5(3) provides that ceasing to pay interest is deemed to be a charge.

Holder must report and pay or deliver unclaimed property

6 (1) A person who, in a calendar year, is or becomes a holder of unclaimed property must, within 4 months after the end of that calendar year or within any longer period that the administrator may determine under subsection (4), comply with subsection (2) if the person remains a holder of some or all of that unclaimed property and if

(a) the holder is an individual who is ordinarily resident in [*Enacting Jurisdiction*], or

(b) in the case of a holder that is not an individual,

> **(i) the last known address for the apparent owner shown in the records of the holder is in [*Enacting Jurisdiction*] and the holder carries on business in [*Enacting Jurisdiction*],**
> **(ii) the last known address of the apparent owner shown in the records of the holder is in a reciprocating jurisdiction in which the holder does not carry on business and the holder is based in [*Enacting Jurisdiction*], or**
> **(iii) the records of the holder do not show the identity of the apparent owner, or, if an identity is shown, do not show any address for the apparent owner, and the holder is based in [*Enacting Jurisdiction*].**

(2) A reporting holder must, within the time required by subsection (1),

(a) prepare a report, in the prescribed form, respecting the unclaimed property of which the person remains a holder,

(b) identify, in the report,

> **(i) the unclaimed property to which the report refers,**
> **(ii) the name, if known, the last known address, if any, the social insurance number, if known, and the date of birth, if known, of the apparent owner of the unclaimed property,**
> **(iii) the date that begins the period that, under section 2 (1), is applicable to the property, and the date of the last transaction with the apparent owner with respect to the property,**
> **(iv) whether the holder is a successor to another person who previously held the property for the apparent owner, or whether the holder has changed its name while holding the property, and the known names and addresses of all previous holders of the property, if any, and**
> **(v) any other prescribed information,**

(c) deliver the report to the administrator, and

(d) subject to section 12 (2), with that report, pay or deliver to the administrator the unclaimed property to which the report refers.

(3) If a reporting holder fails to maintain the prescribed records such that the records available to the holder are not sufficiently complete to allow the holder to prepare the report required under subsection (2), the reporting holder must, within the time required by subsection (1),

(a) deliver to the administrator a report that complies with subsection (2) (a) and (b) to the extent possible, and

(b) pay or deliver the unclaimed property to the administrator or, if the reporting holder is not able to effect that payment or delivery, pay to the administrator, in compensation for that unclaimed property, the amount that the administrator reasonably estimates, on the basis of the reporting holder's records or other reasonable method of estimation, is equal to the value of the unclaimed property that ought to have been paid or delivered by the reporting holder under subsection (2) (d).

(4) Before the date for filing the report, a reporting holder may request the administrator to extend the time for filing the report and paying or delivering the unclaimed property, and the administrator may grant the extension for good cause including, without limitation, if the property is an automatically renewable deposit and payment or delivery of the unclaimed property within the time required under this section would result in a penalty or forfeiture in the payment of interest.

Comment: Section 6 sets out the obligations of a holder to report and deliver unclaimed property to the administrator, and correspondingly establishes the entitlement of the enacting jurisdiction to receive unclaimed property and reports thereof.

Section 6(1)(a) provides that if the holder is an individual, he or she should report and deliver unclaimed property to the enacting jurisdiction to receive unclaimed property and reports thereof.

Section 6(1)(b) sets out the three situations in which a holder that is not an individual should report and deliver unclaimed property to the enacting jurisdiction.

Section 6(1)(b)(i) provides that if the last known address of the apparent owner shown on the records of the holder is in the enacting jurisdiction and the holder is carrying on business in the enacting jurisdiction, then the holder must report and deliver the unclaimed property to the administrator of the enacting jurisdiction.

Section 6(1)(b)(ii) provides that if the last known address of the apparent owner, as shown on the holder's records, is in a reciprocating jurisdiction in which the holder does not carry on business and the holder is based in the enacting jurisdiction (that is, its central management is exercised in the enacting jurisdiction), then the holder must report and deliver the unclaimed property to the enacting jurisdiction.

Section 6(1)(b)(iii) provides that if the holder's records do not show the identity of the apparent owner, or if shown, do not show any address for the apparent owner, and the holder is based in the enacting jurisdiction, then the holder must report and deliver the unclaimed property to the enacting jurisdiction.

There is, therefore, in each of the three situations a single jurisdiction to which a holder must report and deliver unclaimed property. In section 6(1)(b)(i), it is to the jurisdiction in which the holder is carrying on business and in which the last known address of the apparent owner is located. In sections 6(1)(b)(ii) and (iii), it is to the jurisdiction in which the holder's central management is exercised.

Section 6 does not require a holder to report and deliver unclaimed property if the last known address of the apparent owner, shown on the holder's records, is in a nonreciprocating jurisdiction, that is, a jurisdiction without comparable legislation. This avoids the possibility of a holder being subject to conflicting requirements from different legal regimes.

Section 14 is the companion section to section 6. It provides for the circumstances in which unclaimed intangible property may be delivered from the enacting jurisdiction to another jurisdiction.

Additional requirement to provide unclaimed property

7 (1) The administrator may, in writing, claim unclaimed property from a holder.

(2) Whether or not a holder is a reporting holder when a claim is made under subsection (1), the holder must, subject to section 12 (2), pay or deliver to the administrator, within 21 days after receiving that claim, the unclaimed property referred to in the claim along with a report in the form included with the claim, unless

(a) the unclaimed property is not within the holder's power or control, in which case the holder must pay to the administrator, in compensation for that unclaimed property, an amount that the administrator reasonably estimates, on the basis of the holder's records or other reasonable method of estimation, is equal to the value of the unclaimed property that ought to have been paid or delivered by the holder under this subsection, or

(b) the holder, by completing and returning to the administrator the form included with the claim, disputes the holder's obligation to pay or deliver the unclaimed property and satisfies the administrator that the holder need not, or must not, pay or deliver the unclaimed property to the administrator.

Comment: This section permits the administrator to claim unclaimed property in exceptional circumstances prior to the property becoming deliverable and reportable. Section 7(2) requires the holder to deliver the unclaimed property claimed. If the property is not within the holder's control, the administrator may estimate the amount to be paid, based on the holder's records or other reasonable method of estimation, equal to the value of the unclaimed property that ought to have been delivered under this subsection.

Voluntary payment or delivery of property

8 (1) Subject to section 12 (2), a holder may, with the written consent of the administrator and on any terms and conditions the administrator may impose, pay or deliver property to the administrator

(a) before that property becomes unclaimed property, or
(b) in the case of unclaimed property in respect of which a report is not yet required under section 6, at any time.

(2) The administrator must hold property paid or delivered to the administrator under subsection (1) (a) until it becomes unclaimed property and, after that, the provisions of this Act relating to unclaimed property in the possession of the administrator apply to the property.

(3) A holder who pays or delivers property to the administrator under this section must provide with that property a report that complies with section 6 (2).

Comment: This section permits a holder who is not otherwise obliged to report and deliver unclaimed property under the Act, to do so voluntarily with the consent of the administrator.

Delivery of records

9 (1) If, under section 6, 7 or 8, a holder pays or delivers property, or pays an amount in compensation for property, to the administrator, the administrator may require the holder to deliver to the administrator the records related to that property.

(2) A holder who, under section 6, 7 or 8, paid or delivered property, or paid an amount in compensation for property, to the administrator

(a) must promptly comply with any request made under subsection (1) of this section, and

(b) may, whether or not a request is made under subsection (1), deliver to the administrator any record in relation to that property that the administrator is willing to accept.

Comment: This section enables the administrator to require the delivery of records relevant to the unclaimed property in addition to the report that had been filed with the property. With the administrator's consent, the holder may also deliver to the administrator any records relating to the property.

Administrator may demand additional information

10 (1) Whether or not property of which a person is a holder is paid or delivered to the administrator under this Act, the administrator may, for the purpose of ensuring compliance with this Act and the regulations, make one or both of the following demands to the holder of the property:

(a) a demand that the holder file with the administrator a report or a supplementary report, in the prescribed form, in relation to the property;

(b) a demand that the holder deliver to the administrator any information or records specified by the administrator in the demand in any way relating to the property or the apparent owner.

(2) A demand under subsection (1) must be provided to the holder by

(a) personal delivery,

(b) registered mail, or

(c) any other prescribed manner.

(3) A holder who receives a demand under this section must comply with the demand within 21 days after receipt.

(4) In the event of a conflict between this section and the [*Provincial Privacy Acts*], the [*Provincial Privacy Acts*] prevails.

Comment: Section 10 gives the administrator the authority to require a holder to file a report or a supplementary report, or to deliver any information or documents specified, where the administrator deems it necessary for the purpose of ensuring compliance with the Act.

Retention of records

11 A holder who, under section 6, 7 or 8, delivers a report to the administrator respecting property must maintain in that person's possession or control, for 10 years after complying with section 6, 7 or 8, as the case may be, all of the records relating to the property that are not delivered to the administrator under section 9.

Comment: This section requires holders to maintain records respecting unclaimed property for a period of 10 years after delivering the property to the administrator.

Payment or delivery relieves holder from liability

12 (1) A holder who, in accordance with section 6, 7 or 8, pays or delivers property, or pays an amount in compensation for unclaimed property, to the administrator is relieved of all liability in relation to the property paid or delivered or in relation to which the amount was paid.

(2) The holder must, in relation to any payment or delivery the holder may or must make to the administrator under this Act, make the same withholdings and remittances that the holder would be required to make, under the *Income Tax Act* (Canada) or otherwise, were the holder making the payment or delivery to the owner, and the administrator is entitled to receive from the holder only that portion of the payment or delivery that the owner would be entitled to receive from the holder after all of those withholdings and remittances had been made.

(3) Nothing in subsection (1) relieves a holder from the holder's obligations under subsection (2) or sections 9 to 11.

Comment: This section provides that holders who deliver unclaimed intangible property or an amount in compensation for that property as required under the Act are relieved of all liability respecting the property delivered or the amount paid. Subsection (2) provides that the obligations under the Act are subject to obligations under the Income Tax Act (Canada).

Administrator has rights of owner

13 (1) Subject to this Act, the administrator may, in relation to the unclaimed property or amounts delivered to the administrator under section 6, 7, 8 or 14 (3), exercise all the rights and powers of a legal and equitable owner of that unclaimed property or those amounts and, without limitation and despite any other enactment, the administrator

(a) may dispose of the unclaimed property in any manner the administrator considers reasonable,

(b) must, when investing the unclaimed property or amounts under subsection (2), invest in investments that a prudent investor would make,

(c) if the unclaimed property is a security, may make an endorsement, instruction or order by which may be invoked the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security in accordance with applicable law, and

(d) if the unclaimed property is a security, has the same right to obtain a replacement certificate for that security as does the owner of the security.

(2) Subject to subsection (3), the administrator must invest

(a) the unclaimed property he or she receives under section 6, 7, 8 or 14 (3),

(b) any amounts he or she receives from the disposition of that unclaimed property,

(c) the amounts he or she receives in compensation for unclaimed property under section 6 (3) (b) or 7 (2) (a), and

(d) any other amounts the administrator receives under this Act.

(3) The administrator need not invest unclaimed property he or she receives under section 6, 7, 8 or 14 (3) in accordance with subsection (2) if the administrator considers that it is prudent to retain the unclaimed property in the form in which it was delivered to the administrator.

(4) The administrator may employ or otherwise contract with such persons as the administrator considers appropriate for the purpose of locating owners of unclaimed property, or owners of amounts paid in compensation for unclaimed property, received by the administrator under this Act.

(5) No issuer, no holder and no transfer agent or other person acting or purporting to act under the instructions of and on behalf of the issuer or holder of a security is liable to the owner or apparent owner for complying with any endorsement, instruction or order of the administrator acting under the powers available to the administrator under subsection (1) (c) or (d).

(6) The administrator is not liable for any loss, cost or damages suffered by any person as a result of any action taken or decision made by the administrator under this section unless the action or decision was taken or made in bad faith.

Comment: Section 13 sets out the administrator's authority with respect to property received. So that the administrator may have sufficient authority to preserve and invest the unclaimed property received, he or she may

exercise the rights and powers of an owner. The administrator may dispose of unclaimed property as he or she considers reasonable. When investing, the administrator must do so as would a prudent investor.

Section 13(1)(c) and (d) provide for the ability of the administrator, should it be necessary or appropriate, to deal with investment securities. These subsections are similar to the language in section 8 of the United States Uniform Unclaimed Property Act of 1995.

Section 13(2) requires the administrator to invest unclaimed property received unless the administrator considers it prudent to retain the property in that form.

Section 13(3) relieves those who comply with an endorsement or other direction of the administrator respecting securities from liability to the owner or apparent owner.

Administrators' rights and obligations relative to foreign administrators

14 (1) In this section, "foreign administrator" means, in relation to a jurisdiction other than [*Enacting Jurisdiction*], the person who, in that jurisdiction, exercises a similar role and function to that of the administrator in relation to unclaimed property.

(2) If the administrator receives unclaimed property under section 6, 7 or 8 or under subsection (3) of this section, or receives an amount in compensation for unclaimed property under section 6 (3) (b) or 7 (2) (a), and a foreign administrator claims that unclaimed property or amount from the administrator, the administrator must pay or deliver to the foreign administrator the unclaimed property or amount along with any related records in the possession of the administrator if

(a) the last known address of the owner is in the foreign administrator's jurisdiction or, if no address is known for the owner, the last known address of the apparent owner is in that other jurisdiction, or

(b) no address is known for the owner or the apparent owner and the holder is based in the foreign administrator's jurisdiction.

(3) If a foreign administrator receives unclaimed property, the administrator may claim and receive from the foreign administrator the unclaimed property along with any related records in the possession of the foreign administrator if

(a) the last known address of the owner is in [*Enacting Jurisdiction*] or, if no address is known for the owner, the last known address of the apparent owner is in [*Enacting Jurisdiction*], or

(b) no address is known for the owner or the apparent owner and the holder is based in [*Enacting Jurisdiction*].

Comment: Section 14 is the companion section to section 6. It provides for the circumstances in which unclaimed property received by the enacting jurisdiction may be claimed by another jurisdiction; and in which case, the enacting jurisdiction must deliver that property to the other jurisdiction. The circumstances are as follows:

- if the last known address of the owner, or if owner is unknown, of the apparent owner, is in the other jurisdiction. This circumstance might arise where the holder of the unclaimed property does not carry on business in that other jurisdiction, and is therefore not subject to its jurisdiction. In this situation, the other jurisdiction is not able to claim the property directly from the holder.

- if the last known address of the owner or apparent owner is unknown and the holder is based in that other jurisdiction.

Section 14(2) provides for the corresponding right of the enacting jurisdiction to claim and receive unclaimed intangible property from another jurisdiction in parallel circumstances.

Unclaimed property account

15 (1) The administrator must prepare and maintain as a separate account in the accounts of the [*office of the Public Trustee, or equivalent office, in the Enacting Jurisdiction*] an unclaimed property account consisting of all unclaimed property paid or delivered, and all amounts paid, to the administrator under this Act.

(2) The administrator must, in relation to the unclaimed property account, prepare and maintain records respecting particulars of the unclaimed property and amounts referred to in subsection (1) and their investment and disposal.

(3) At the end of each fiscal year of the administrator, the administrator must deliver to the [*Enacting Jurisdiction*] Minister for deposit into the consolidated revenue fund the balance remaining in the unclaimed property account at that time less a reasonable reserve, in an amount approved of by the [*Enacting Jurisdiction*] Minister, against future claims against the account including, without limitation, claims by the administrator under subsection (5).

(4) If the amount at any time held in the unclaimed property account is not sufficient to meet the claims against it, the [*Enacting Jurisdiction*] Minister is to pay from the consolidated revenue fund to the credit of the unclaimed property account, without any appropriation other than this section, an amount sufficient to allow the administrator to meet those claims.

(5) The administrator is entitled to claim against the unclaimed property account the prescribed expenses of administration in relation to property and amounts received and administered by the administrator under this Act.

Comment: The administrator must establish and maintain a separate account of unclaimed property, and must record the particulars of the unclaimed property received and how it was invested or otherwise disposed.

Section 15(3) and (4) provide for the transfer to the enacting jurisdiction's consolidated revenue fund of the balance of the unclaimed property account, while maintaining a reasonable reserve to permit prompt payment of future claims. The transfer is subject to the obligation to meet claims against the unclaimed property account. The Minister responsible is required, should it be necessary, to pay to the unclaimed property account amounts sufficient to meet the obligations of the program.

Public notice by administrator

16 (1) In addition to preparing and maintaining the records referred to in section 15 (2), the administrator must

(a) maintain an electronic or other database of the names of every apparent owner on whose behalf property has been paid or delivered, and amounts in compensation for property have been paid, to the administrator under section 6, 7, 8 or 14 (3), and

(b) make the database available to the public in any manner that the administrator considers appropriate.

(2) In addition to preparing and maintaining the records referred to in section 15 (2) and the database referred to in subsection (1) of this section, the administrator must, for all property paid or delivered, and for all amounts in compensation for property paid, to the administrator under section 6, 7, 8 or 14 (3) that have been in the custody or control of the administrator for at least 24 months,

(a) maintain an electronic or other database of that property and those amounts,

(b) include in the database the prescribed particulars for that property and those amounts, and

(c) make the database available to the public in any manner that the administrator considers appropriate, subject to any restrictions imposed by regulations.

(3) At least annually, the administrator must publicize the existence of and means of accessing the databases in a manner that, in the opinion of the administrator, is reasonably sufficient to bring the databases to the attention of the public.

(4) The administrator is not liable for any loss, cost or damages suffered by any person as a result of any information included in or omitted from a database referred to in this section unless the inclusion or omission was in bad faith.

Comment: After receiving unclaimed property under the Act, the administrator must endeavor to draw the existence of the unclaimed property to the attention of owners. The administrator must maintain and make available to the public a database of the names of apparent owners; and a database of unclaimed property received. Further, the administrator must, at least annually, publicize the existence and means of accessing the databases.

Claims respecting property

17 (1) If, under this Act, property is paid or delivered to the administrator or an amount is paid to the administrator in compensation for unclaimed property, a person who asserts a claim to that property or amount may claim that property or amount by filing with the administrator a claim that includes

(a) the full name and address of the claimant,

(b) the basis on which the claim is made, and

(c) any other information the administrator may reasonably require in support of the claim.

(2) The administrator must, within 90 days after a claim is filed under subsection (1), consider the claim and must

(a) allow the claim if the administrator is satisfied that the claimant

(i) is the owner of the property or amount, or
(ii) has a valid entitlement to the property or amount but is prevented from asserting full rights as owner to that property or amount because of a procedural impediment to the claimant assuming those ownership rights, including, without limitation, in the case of an entitlement arising under an estate, the fact that the estate has not yet been probated,
or

(b) if not so satisfied, deny the claim.

(3) Subject to subsection (5), if the administrator allows a claim filed under subsection (1), the administrator must, within 30 days after the claim is allowed,

(a) do one of the following:

(i) pay or deliver to the claimant the property or amount;
(ii) for unclaimed property that has been sold by the administrator, pay to the claimant the proceeds of the sale, net of all costs reasonably incurred in conducting that sale,

and

(b) do whichever of the following apply:

(i) if and to the extent that the property was paid or delivered to the administrator as money, pay to the claimant interest on that money calculated from the time the property was paid or delivered to the administrator;
(ii) if and to the extent that the claim relates to an amount received by the administrator under section 6 (3) (b) or 7 (2) (a) in compensation for unclaimed property, pay to the claimant interest on that amount calculated from the time the amount was paid to the administrator;
(iii) if and to the extent that the property was paid or delivered to the administrator in a form other than money,
(A) pay to the claimant any dividend, interest or increment realized on the property calculated from the date that the property was paid or delivered to the administrator to the date that the property was converted into money, and
(B) pay to the claimant interest on the property calculated from the time of its conversion into money;
(iv) if and to the extent that the property was disposed of by the administrator, pay to the claimant interest on the proceeds of disposition calculated from the time of the disposal of that property.

(4) Interest payable under subsection (3) (b) must be calculated at a yearly rate that is [*2% below the prime lending rate of the principal banker to the government*] [*appropriate government interest amount applicable to the Enacting Jurisdiction*].

(5) The administrator may deduct from the money that the administrator is required to pay to a claimant under subsection (3)

(a) the reasonable costs and expenses incurred and the prescribed fees of administration charged, by the administrator or the government in relation to

(i) the property received and administered under this Act, or
(ii) the amounts paid in compensation for unclaimed property received and administered under this Act, and

(c) if the claimant was located through the efforts of a person employed or contracted with under section 13 (4), the reasonable costs and expenses incurred by the administrator in employing or contracting with that person.

(6) On application by a claimant or the administrator, the [*superior court*] may determine the rights of a claimant under this section.

(7) An application to court by a claimant under subsection (6) must be brought

(a) after the expiry of the period of time within which the administrator is required to allow or deny the claim under this Part, and

(b) within any period of time prescribed by the regulations.

Comment: This section establishes the right of an owner of unclaimed property to claim that property. The administrator must, within 90 days of a claim being made, consider and allow the claim if he or she is satisfied that the claimant is the owner. The administrator is also given the discretion to allow a claim if he or she is satisfied that an applicant has a valid entitlement but is prevented from asserting his or her full rights due to a procedural impediment.

If the administrator allows a claim, he or she must deliver the property or amount to the owner together with any interest, dividends, or increment realized on the property.

The administrator may deduct reasonable costs and prescribed fees of administration.

In the event of a dispute between a claimant and the administrator, the superior court of the enacting jurisdiction may determine a claimant's rights on application.

Agreements with other jurisdictions

18 (1) For the purpose of locating owners of unclaimed property, the government may enter into one or more agreements with the government of Canada, the government of any province or territory of Canada or the government of any other jurisdiction, and the administrator may enter into one or more agreements with the person who, in another jurisdiction, carries on a role or function similar to the role and function carried on by the administrator under this Act, to enable one or both of the contracting parties

(a) to determine the unclaimed property or amounts to which a contracting party is entitled, or

(b) to exchange information and deliver property or amounts to facilitate the return of unclaimed property or its value to its rightful owner.

(2) The government may enter into one or more agreements with the government of Canada or the government of any province or territory of Canada to provide for a joint or multi-jurisdictional unclaimed property program to be administered by any party to the agreement.

Comment: Given the interjurisdictional scope of unclaimed property, and the importance of cooperation amongst jurisdictions, section 18 enables the government and the administrator to enter into interjurisdictional agreements. Section 18(1) enables agreements with other jurisdictions to determine unclaimed property to which a contacting jurisdiction is entitled; and to exchange information and to deliver property to facilitate the return of property to its rightful owner. Section 18(2) allows the government to enter into agreements with one or more Canadian jurisdictions to establish joint or multi-jurisdictional unclaimed property programs.

PART 3 – INSPECTIONS

Definition

19 In this Part, "holder" has the same meaning as in section 1 (1), and includes a person who the administrator or the inspector has reasonable grounds to believe is a holder.

Comment: Holder is defined in this part to include a person who the administrator or an inspector reasonably believes to be a holder when carrying out inspections under the Act.

Inspection

20 (1) For the purpose of ensuring compliance with this Act and the regulations, the administrator or a person authorized in writing by the administrator may conduct an inspection under subsection (2).

(2) In an inspection under this Part, an inspector

(a) may, during business hours, attend at any business premises of a holder of property and

> **(i) require the holder to produce any records, applicable to the property, that are in the possession or control of the holder,**
> **(ii) inspect and remove any of the records produced under subparagraph (i) that are relevant to the inspection for the purpose of making copies or extracts, and**
> **(iii) inspect those premises and the operations carried on at those premises,**

(b) may question a person who the inspector has reasonable grounds to believe has information relevant to the matters that the inspector considers are or may be relevant to an inspection under this Act, subject to the person's right to have counsel or some other representative present during the questioning,

(c) must carry identification in the prescribed form, and

(d) must present the identification to the registered owner, or occupant, of the premises.

(3) Without limiting subsection (2) (a), an inspector may require the production of all business records of a holder that may be relevant to the inspection, including, without limitation, any of the following:

(a) accounting books;

(b) cash;

(c) bank account records;

(d) vouchers;

(e) correspondence;

(f) contracts.

(4) A holder and the holder's employees must cooperate with an inspector by

(a) permitting that inspector, during business hours, to enter any business premises of the holder at which the inspector has reasonable grounds to believe that records of the holder that are relevant to the inspection are located,

(b) producing and permitting examination of those records, and

(c) providing any assistance and information that the holder or employee is reasonably able to give respecting those records and respecting any property being held for an apparent owner.

(5) If an inspector removes any records under subsection (2) (a) (ii), he or she must give a receipt for them to the person from whom they are taken.

(6) A person must not obstruct an inspector or withhold, destroy, conceal or refuse to produce any information, record or thing that is required by the inspector or is otherwise relevant to any of the matters in relation to which the inspection may be conducted.

(7) If, in an inspection, it is determined that the holder was required to but failed to comply with section 6 or 7, the administrator may assess the holder for the prescribed costs of the inspection and the holder must promptly pay those costs to the administrator.

Comment: The inspection provisions allow the administrator, where necessary in a given instance, to obtain information required to ensure compliance with the Act. Section 20(2) provides that the administrator may require a holder to produce applicable records, and may inspect and make copies of such records. An inspector may inspect a holder's premises and question relevant persons. A holder and its employees are required to cooperate with an inspector and must produce business records when required.

Warrants

21 (1) A justice may, in relation to an inspection under section 20, issue a warrant authorizing the person named in the warrant and, if appropriate, any peace officer that the person may call on for assistance under subsection (8) of this section, to do one or more of the following:

(a) enter any business premises of the holder being inspected for the purpose of searching for, inspecting and removing any records and things relevant to the inspection;

(b) enter any other property, including a room actually used as a dwelling, or to search any thing, for the purpose of searching for, inspecting and removing any records and things relevant to the inspection.

(2) A warrant may be issued under subsection (1) if the justice is satisfied on information under oath that,

(a) in the case of a warrant to be issued under subsection (1) (a), there are reasonable grounds to believe that a person who has possession of or control over records of the holder that are relevant to the inspection has not produced or will refuse to produce one or more of those records to an inspector, or

(b) in the case of a warrant to be issued under subsection (1) (b), there are reasonable grounds to believe that

> **(i) an offence under section 27 has been committed, and**
> **(ii) there is, on or in the premises, the record or the thing to be searched, as the case may be, a record or thing that will provide evidence of the commission of the offence.**

(3) A warrant issued under this section must specify the hours and days during which it may be executed.

(4) Unless renewed, a warrant issued under this section expires not later than 30 days after the date on which it is made.

(5) An application for the issue or renewal of a warrant under this section may be made without notice.

(6) A warrant issued under this section may be renewed for any reason for which it may be issued.

(7) An inspector may call on any experts that are reasonably necessary to assist the person in carrying out the inspection.

(8) A person doing anything under the authority of a warrant issued under this section, whether or not the warrant expressly authorizes a peace officer to assist the person, may call on peace officers to assist, if necessary, in the execution of the warrant. [different jurisdictions may wish to prepare different warrant provisions]

Comments: This section is square bracketed as different provinces or territories may wish to include their own warrant provisions.

Copies of records

22 (1) An inspector who removes any records may make copies of them, take extracts from them or otherwise record them, and must return them within a reasonable time.

(2) Copies of or extracts from records removed under section 20 or 21 are admissible in evidence to the same extent, and have the same evidentiary value, as the original records if those copies or extracts are certified by the person who made them as being true copies of or extracts from the originals.

Comment: Section 22(1) enables an inspector to make copies or make extracts of records and requires them to be returned in a reasonable time. This power is ancillary to the general inspection powers. Section 22(2) provides for the evidentiary status of certified copies or extracts of records.

Confidentiality

23 A person, including the administrator, must not disclose or be compelled to disclose any information or record that is obtained in the course of an inspection authorized by or under this Act unless

(a) the disclosure is necessary in the administration of this Act or under an agreement referred to in section 18, or

(b) the disclosure is required in a court proceeding.

Comment: This section requires confidentiality of information or records unless required pursuant to the Act, an agreement entered into between jurisdictions, or a court proceeding.

PART 4 – ENFORCEMENT

Determination and review

24 (1) If the administrator determines that a reporting holder has not paid or delivered unclaimed property as required by this Act, the administrator may make a determination as to

(a) the unclaimed property that is payable or deliverable,

(b) the value of that unclaimed property as of April 30 of the year in which the holder was required to pay or deliver the unclaimed property, and

(c) the amount of interest that, under section 28, has accrued and will continue to accrue until

> **(i) the unclaimed property is paid or delivered, or**
> **(ii) an amount in compensation for that unclaimed property is paid under section 6 (3) (b) or 7 (2) (a).**

(2) A determination made under subsection (1) must be provided to the holder by

(a) personal delivery,

(b) registered mail, or

(c) any other prescribed manner.

(3) Unless the holder to whom a determination is provided under subsection (2) objects in accordance with subsection (4), the determination is final and the holder must, within 60 days after receipt of that determination,

(a) pay or deliver the unclaimed property as required by this Act, and

(b) pay to the administrator any interest referred to in the determination.

(4) A holder to whom a determination is provided under subsection (2) may object to that determination by filing with the administrator, within 60 days after receipt of the determination, a written objection setting out the facts on the basis of which the holder objects to that determination.

(5) If the administrator receives a notice of objection under subsection (4), the administrator must reconsider the determination and, after that, must

(a) determine the unclaimed property, if any, that is payable or deliverable,

(b) determine the value of the unclaimed property as of April 30 of the year in which the holder was required to pay or deliver the unclaimed property,

(c) determine the amount of interest, if any, that, under section 28, has accrued and will continue to accrue until

> **(i) the unclaimed property is paid or delivered, or**
> **(ii) an amount in compensation for that unclaimed property is paid under section 6 (3) (b) or 7 (2) (a),**

(d) advise the holder by personal delivery or registered mail of the final determination arising from the review, and

(e) return to the holder any property that the holder has paid or delivered to the administrator and that the administrator has determined should be returned.

(6) A holder must, within 60 days after receipt of a final determination under subsection (5) and whether or not an appeal is brought under section 25,

(a) pay or deliver the unclaimed property in accordance with the final determination, and

(b) pay to the administrator any interest referred to in the final determination.

Comment: The purpose of section 24 is to provide a process by which the administrator and a holder may endeavor to resolve a disagreement where property has not been delivered to the administrator as required. If the administrator determines that a holder has not delivered unclaimed property as required under the Act, the administrator may make an initial determination respecting the property that is deliverable, its value and interest. Unless the holder objects within 60 days, the initial determination becomes final. If a holder files an objection setting out the facts on which the objection is based, the administrator must reconsider the initial determination. Should the administrator confirm the initial determination, the holder must comply within the time required.

Appeal from determination of the administrator

25 (1) A holder who disputes a reconsideration of the administrator made under section 24 or under subsection (2) (b) of this section may, within 30 days after receipt of the administrator's decision, appeal that decision to [*a superior court*].

(2) On an appeal under subsection (1), the [*court*] may

(a) allow the appeal or part of the appeal and vacate or vary the determination,

(b) refer the determination back to the administrator for reconsideration and redetermination, or

(c) dismiss the appeal.

Comment: This section enables a holder who disputes the administrator's reconsideration to appeal to the superior court of the jurisdiction. A jurisdiction may prefer that appeals be to an administrative tribunal, perhaps with further appeals on questions of law to a superior court or court of appeal.

Court may enforce obligations

26 On application by the administrator, the [*superior court*] may order a holder of unclaimed property or any other person or entity to provide records, deliver property or pay any amount in accordance with this Act or the regulations, or to otherwise comply with this Act and the regulations.

Comment: Should it be necessary, the administrator may apply for a court order to enforce compliance with the Act and Regulations.

Offences

27 (1) A person commits an offence who

(a) knowingly obstructs or hinders an inspector carrying out or attempting to carry out an inspection under this Act,

(b) knowingly participates in, assents to or acquiesces in the making of an incorrect statement or omission in a report or return under this Act or the regulations,

(c) without reasonable excuse, fails to maintain, in accordance with this Act or the regulations, a record that the person is required under this Act to maintain,

(d) without reasonable excuse, fails to file a report, pay or deliver unclaimed property or pay an amount in compensation for property as required by this Act or the regulations, or

(e) without reasonable excuse, fails to comply with a demand of the administrator under section 10.

(2) A person who is guilty of an offence under subsection (1) is liable on conviction to a fine of not more than $5 000, or, if the person is a corporation, to a fine of not more than $25 000.

(3) If a corporation commits an offence under subsection (1), any director or officer of the corporation who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence, and is liable on summary conviction to a fine of not more than $5 000 whether or not the corporation has been prosecuted or convicted.

(4) A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

(5) [*Provincial or territorial statutory offence Act*] does not apply to this Act or the regulations.

Comment: This section sets out the types of misconduct which constitute offences under the Act.

Interest

28 (1) Unless exempted from doing so by the administrator, a holder who has not paid or delivered unclaimed property in the manner and time required under section 6 or 7 (2) or who has not paid an amount to the administrator in compensation for that unclaimed property in the manner and time required under section 6 (3) (b) or 7 (2) (a), must pay to the administrator interest on the value of the unclaimed property.

(2) Interest payable under subsection (1) of this section must be paid

(a) at [*a yearly rate that is 2% above the prime lending rate of the principal banker to the government or at such other rate as may be prescribed or*] [*appropriate government interest amount applicable to the Enacting Jurisdiction*], and

(b) from April 30 of the year in which the holder was required to pay or deliver the unclaimed property to the administrator up to and including the date on which the unclaimed property is paid or delivered or the amount is paid to the administrator.

Comment: This section provides that, unless otherwise exempted by the administrator, a holder must pay interest as prescribed on property or amounts unpaid.

PART 5 – GENERAL

Agreements to locate property

29 (1) An agreement by which one party to the agreement agrees to locate or recover unclaimed property for an owner

(a) must clearly set out the terms of the agreement, including the value of the unclaimed property and the total cost of the contract to the owner, and

(b) must be in writing and signed by the owner.

(2) A provision in an agreement referred to in subsection (1) is of no force or effect if it provides for unreasonable compensation or expenses or both or is otherwise unconscionable.

(3) The Lieutenant Governor in Council may, for the purposes of subsection (2), prescribe a maximum amount of compensation or expenses or both and may prescribe different maximum amounts based on different values of the unclaimed property involved, and, in that event, any compensation or expenses or both provided for in an agreement that exceed that prescribed maximum are, for the purposes of subsection (2), unreasonable.

(4) Despite any provision of an agreement referred to in subsection (1), of an assignment, of a transfer, of a power of attorney or of any other similar record, the administrator may pay or deliver any unclaimed property or pay any amount directly to a claimant who satisfies the administrator under section 17 (2) (a).

(5) An agreement referred to in subsection (1) is of no force or effect if it is made within the period beginning on the date on which the property becomes unclaimed property under this Act and ending on the date that is 24 months after the date on which the administrator obtains the unclaimed property under this Act.

(6) This section does not apply to an agreement between an owner and a lawyer under which the lawyer agrees to act in his or her professional capacity, as lawyer for the owner, to assist the owner to locate or recover unclaimed property.

Comment: This section provides for rules respecting agreements to locate or recover unclaimed property entered into between owners and property locator firms. Section 29(3) permits the Lieutenant Governor in Council to prescribe maximum amounts of compensation or expenses. Section 29(4) provides that the administrator may deliver unclaimed property directly to a claimant who satisfies the administrator that he or she is entitled to the property. Section 29(5) limits agreements to locate unclaimed property to the period beginning 24 months after the administrator obtains the property. This section does not apply to agreements between an owner and a lawyer acting in his or her professional capacity as a lawyer on behalf of the owner.

No contracting out

30 An agreement excluding or purporting to exclude one or more provisions of this Act has no effect.

Comment: In order to protect owners of unclaimed property, the provisions of the Act may not be excluded by agreements.

Rights unaffected by limitation periods

31 (1) The expiration, before or after the coming into force of this Act, of a period of limitation in relation to property or any person's rights in relation to that property does not

(a) affect the person's rights to receive or recover the property from the administrator or a holder, whether or not those rights are derived from or specified by contract, statute or court order,

(b) preclude the property from being or becoming unclaimed property, and

(c) affect any duty, arising under this Act, to

(i) provide any notice,
(ii) deliver any report,
(iii) maintain any records,
(iv) pay any amount, or
(v) pay or deliver the property.

(2) Without limiting subsection (1), if there is a conflict or an inconsistency between this Act and the *Limitation Act*, this Act prevails.

Comment: This section ensures that the rights and obligations under the Act are not affected by periods of limitation. It should be noted that this does not extend the liability of a holder after he or she has complied with the Act.

Power to make regulations

32 (1) [*The Lieutenant Governor in Council may make regulations that are considered necessary and advisable for, ancillary to and not inconsistent with this Act*]

(2) Without limiting subsection (1) and section 29 (3), the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing things or classes of things that do not constitute property;

(b) designating one or more jurisdictions as reciprocating jurisdictions;

(c) prescribing any or all of the form of any records, the information to be contained in any records and the manner of providing any records, that are to be provided to or by the administrator;

(d) prescribing the maximum amount of any fees or charges that a holder may charge an owner or an apparent owner under section 5;

(e) respecting the records that must be maintained by a holder in relation to property;

(f) respecting any fee or expense that may be charged or deducted by the administrator under this Act;

(g) respecting the time within which an application may be brought under section 17 (7) (b);

(h) respecting the form of identification to be carried by an inspector under this Act;

(i) respecting the inspection costs that may be assessed under section 17 (7);

(j) prescribing the rate of interest, or the manner of calculating the rate of interest, that is payable under section 28;

(k) for any other matter necessary or advisable to carry out this Act.

Comment: This section sets out the matters upon which the Lieutenant Governor in Council may make regulations with respect to administrative rules which may require periodic alteration due to changing circumstances.

Transition

33 (1) Subject to subsection (2), the periods of time set out in this Act and the regulations for calculating when property becomes unclaimed property may include or consist of periods of time occurring before as well as after the coming into force of this Act.

(2) This Act applies to all unclaimed property unless

(a) all legal and equitable interests in that property were extinguished or forfeited, before the coming into force of this Act, in accordance with a provision of an enactment or of a contract, bylaws, letters patent, articles of association or incorporation or any other similar instrument, or

(b) the property would have become unclaimed property more than 5 years before the coming into force of this Act had the definition of that term in section 1 and any regulations made in relation to that definition been in force at that time.

Comment: This section provides that the Act does not apply to property in respect of which the owner's interest has been extinguished at law or to property in respect of which the holder has received no communication from the owner in the ten year period immediately preceding the coming into force of the Act.

Commencement

34 This Act comes into force by regulation of the Lieutenant Governor in Council.

Comment: This section provides that the Act comes into force by regulation of the Lieutenant Governor in Council. This would permit a sufficient period of time for affected parties to prepare for the coming into force of the Act.

Appendix B

Dissolved Corporations Timeline

Day 0 minus 18 months	Day 0	Day 0 to 5 years	5 years	5 years + 60 days	Anytime after 5 years	10 years from date property is transferred to administrator
Failure to file corporate annual return	Corporation is struck from corporate register	Creditors and municipalities can continue to enforce security; administrator may be advised of property by municipalities or others and take recovery steps if appropriate	Corporation can no longer revive; If corporation has already revived, still can reclaim property until 10 years from date property transferred to administrator; administrator gives notice to any remaining encumbrances registered on the title of permanently vested land of a "last chance" 60 day period, or encumbrance will be removed from title.	Remaining encumbrances are removed from title to vested property; notice to LTO to cancel title and issue a new title to administrator	Crown is permanent vested owner of property of dissolved corporation and administrator will take active steps to secure property as it becomes aware of it	Deadline for a revived corporation to reclaim property

Abandoned or Unclaimed Property Timeline

Day 0	1 year	5 years	11 years (10 years from transfer to administrator)	15 years (10 years from transfer to administrator)
Last contact between property holder and owner	Uncollected wages become unclaimed and payable to administrator	Default time period for holders to transfer property to administrator	Deadline for owner to claim unclaimed wages from administrator	Default deadline for owner to claim unclaimed property from administrator